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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 17, 2020

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KIMBERLY K. B.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 1:20-CV-3005-RMP

ORDER ADOPTING REPORT AND
RECOMMENDATION

BEFORE THE COURT is United States Magistrate Judge Mary K. Dimke's Report and Recommendation ("R & R"), ECF No. 14 (Oct. 27, 2020), to deny Plaintiff Kimberly B.'s¹ motion for summary judgment, ECF No. 10, and grant Defendant Commissioner of Social Security's (the "Commissioner's") cross-motion for summary judgment, ECF No. 11. On October 30, 2020, Plaintiff timely objected to the R & R. ECF No. 15. The Commissioner responded to the objection on

¹ In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's first name and last initial.

1 November 10, 2020. ECF No. 16. The Court has reviewed the R & R, the
2 Commissioner's objections and the parties' other submissions, the relevant law, and
3 is fully informed.

4 Upon objection to a magistrate's report and recommendation, district courts
5 review de novo "those portions of the report or specified proposed findings or
6 recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Court
7 applies the overarching legal standard that the Social Security Commissioner's final
8 determination that a claimant is not disabled must be upheld if: (1) the "proper legal
9 standards" have been applied; and (2) "substantial evidence in the record as a whole"
10 supports that determination." *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir.
11 1986). In objecting to Judge Dimke's recommended disposition of Plaintiff's
12 appeal, Plaintiff argues that the Court should reverse the Administrative Law
13 Judge's ("ALJ") decision because there was harmful error in evaluating medical
14 opinion evidence and assessing Plaintiff's testimony. ECF No. 15 at 2. The
15 Commissioner responds that Plaintiff merely reiterates the arguments that she made
16 in moving for summary judgment. ECF No. 16 at 1.

17 Having reviewed de novo the portions of the report and specified proposed
18 findings to which Plaintiff objected, the Court finds that Magistrate Judge Dimke's
19 R & R appropriately addressed Plaintiff's arguments regarding the medical opinion
20 evidence consistent with the relevant legal standards and the record in this case.

1 ECF No. 14 at 11–15. Magistrate Judge Dimke found that the medical opinions at
2 issue were properly discounted after confirming that the ALJ had given specific,
3 legitimate reasons for treatment of those opinions, supported by substantial
4 evidence. *Molina v. Astrue*, 674 F.3d 1104, 1121 (9th Cir. 2012) (“Even when an
5 agency explains its decision with less than ideal clarity, we must uphold it if the
6 agency's path may reasonably be discerned.”) (internal quotation omitted).

7 Magistrate Dimke also found substantial evidence supporting each of the ALJ's
8 reasons for discounting Plaintiff's subjective complaints of disability. Specifically,
9 Magistrate Dimke found that the ALJ had provided clear and convincing reasons for
10 discounting Plaintiff's subjective complaints on the basis of inconsistency with the
11 record evidence, Plaintiff's improvement with treatment, Plaintiff's lack of mental
12 health treatment, and Plaintiff's activities of daily living. *See* ECF No. 14 at 23–28.

13 Therefore, on de novo review, this Court concludes that the ALJ's treatment
14 of the medical opinion evidence and Plaintiff's subjective symptom testimony do not
15 warrant remand.

16 Accordingly, the Court **ADOPTS** the R & R, **ECF No. 14**, in this matter **in its**
17 **entirety**. Consequently, **IT IS HEREBY ORDERED**:

- 18 1. Plaintiff's Motion for Summary Judgment, **ECF No. 10**, is **DENIED**.
- 19 2. Defendant's Motion for Summary Judgment, **ECF No. 11**, is **GRANTED**.
- 20 3. The District Court Clerk is directed to enter judgment for Defendant.

1 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
2 Order, enter judgment as directed, provide copies to counsel, and **close the file in**
3 **this case.**

4 **DATED** November 17, 2020.

5 *s/ Rosanna Malouf Peterson*
6 ROSANNA MALOUF PETERSON
7 United States District Judge